and there was no suggestion of tampering. See *Cline*, 349 F.3d at 1284 ("there [was] no evidence of bad faith and no indication that the recordings were tampered with or that there was any tactical advantage gained by" a one-week delay); *Wilkinson*, 53 F.3d at 760 (where there was no basis for inferring any prejudice to defendant, no evidence of tampering, and no indication that 15-day delay in sealing tape was either a deliberate flouting of the statutory requirement or an effort to gain tactical advantage, explanation was satisfactory); *Maldonado-Rivera*, 922 F.2d at 950 ("In general, explanations have been ruled satisfactory where the government advanced a bona fide reason, there was no reason to believe there was any deliberate flouting of the Title III requirements, no reason to doubt the tapes' integrity, and no basis for inferring any other prejudice to the defendants.").

There is also no indication that the standard of review has any significant bearing on the outcome of the decided cases. See *Pedroni*, 958 F.2d at 265 (explanation was satisfactory where "(1) integrity of the tapes maintained through special procedures; (2) total delay of only fourteen days; (3) tapes were ready for sealing in six days (and in three non-holiday work days); (4) delay due to heavy work load of responsible FBI agent; (5) part of delay due to judge's unavailability and decision when to schedule hearing"); *United States* v. *Maxwell*, 25 F.3d 1389, 1394 (8th Cir.) ("Intervening weekends, holidays, and the unavailability of the issuing judge are satisfactory explanations for slight delays in presenting wiretap recordings for sealing."), cert. denied, 513 U.S. 1031 (1994); *United States* v. *Ardito*, 782 F.2d 358, 362-363 (2d Cir.) (two-day intervening holiday, unavailability of issuing judge, and need to prepare paperwork provided

adequate explanation for five-day delay), cert. denied, 476 U.S. 1160 (1986). In the absence of indications that the different articulations of the standard of review are producing different results, this Court's review is not warranted.

2. Petitioner also argues (Pet. 7) that the court of appeals' decision conflicts with this Court's ruling in *Ojeda Rios* by permitting proof that tampering has not occurred to substitute for a satisfactory explanation for a delay in sealing. This argument, too, lacks merit.

This Court, in *Ojeda Rios*, held that the "'satisfactory explanation' language in § 2518(8)(a) must be understood to require that the Government explain not only why a delay occurred but also why it is excusable." 495 U.S. at 265. The court of appeals here applied that standard, considering carefully the government's explanation before excusing the delay. Pet. App. 7.

The court of appeals' analysis does not conflict with this Court's statement in *Ojeda Rios* that "proof of nontampering" is not a "substitute for a satisfactory explanation." 495 U.S. at 264-265. *Ojeda Rios* did not suggest that nontampering is irrelevant to the analysis. Indeed, this Court was clear that the central function of the sealing requirement is to guard against tampering, stating:

> The primary thrust of § 2518(8)(a) and a congressional purpose embodied in Title III in general, is to ensure the reliability and integrity of evidence obtained by means of electronic surveillance. The presence or absence of a seal does not in itself establish the integrity of electronic surveillance tapes. Rather, the seal is a means of ensuring that subsequent to its placement on a tape, the Government has no opportunity to tamper with, alter, or edit the conversations

> that have been recorded. It is clear to us that Congress viewed the sealing requirement as important precisely because it limits the Government's opportunity to alter the recordings.

Id. at 263 (citations omitted) (citing S. Rep. No. 1097, 90th Cong., 2d Sess. 105 (1968)). Nevertheless, *Ojeda Rios* made clear that non-tampering is not sufficient to satisfy Section 2518(8)(a)'s "satisfactory explanation" requirement, and that the government must also establish "good cause for the sealing delays." *Id.* at 265-266.

The court of appeals did not equate proof that tampering did not occur with proof of a satisfactory explanation. In observing that "an explanation is satisfactory if, in the circumstances, it dispels any reasonable suspicion of tampering," Pet. App. 6, the court of appeals was explaining why it had rejected petitioner's argument that an explanation that "reveals that the delay was the result of carelessness" is per se inadequate. *Id.* at 5. The court found such a "strict" rule to be excessive in light of the purpose of the statute, which is to minimize the risk of tampering. *Id.* at 5-6.

But the court went on to make clear that the government's overall conduct had to be evaluated in order to determine whether its explanation was satisfactory, and nowhere suggested that proof of nontampering alone would satisfy the government's burden or substitute for a satisfactory explanation. Thus, the court held that whether an explanation is satisfactory depends on several factors, including the plausibility of the explanation, the length of the delay, the nature of the crime and the notoriety of the defendant, and the importance of the tapes to the government's case. Pet. App. 6. The court of appeals' approach, therefore, does not conflict with *Ojeda Rios*, in which this Court examined whether the

delays at issue "were the result of a good-faith, objectively reasonable misunderstanding." 495 U.S. at 265.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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